

TITLE 2. ADMINISTRATION

CHAPTER 19. OFFICE OF ADMINISTRATIVE HEARINGS

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ARTICLE 1. PREHEARING AND HEARING PROCEDURES

R2-19-101. Definitions

The following definitions apply unless otherwise stated:

1. "Agency" means the department, board, or commission from which a matter originates.
2. "Matter" means a contested case or appealable agency action.

Historical Note

Section adopted by final rulemaking at 5 A.A.R. 563, effective February 3, 1999 (Supp. 99-1).

R2-19-102. Applicability

- A. These rules apply to any matter heard by the Office of Administrative Hearings.
- B. An administrative law judge may waive the application of any of these rules to further administrative convenience, expedition, and economy if:
 1. The waiver does not conflict with law, and
 2. The waiver does not cause undue prejudice to any party.
- C. If a procedure is not provided by statute or these rules, an administrative law judge may issue an order using the Arizona Rules of Civil Procedure and related local rules for guidance.

Historical Note

Section adopted by final rulemaking at 5 A.A.R. 563, effective February 3, 1999 (Supp. 99-1).

R2-19-103. Request for Hearing

- A. An agency requesting the Office schedule an administrative hearing shall provide the following information on a form provided by the Office:
 1. Caption of the matter, including the names of the parties;
 2. Agency matter number;

3. Identification of the matter as a contested case or appealable agency action;
4. In an appealable agency action, the date the party appealed the agency action;
5. Estimated time for the hearing;
6. Proposed hearing dates;
7. Any request to expedite or consolidate the matter; and
8. Any agreement of the parties to waive applicable time limits to set the hearing.

- B. The Office may require the agency to supply information regarding the nature of the proceeding, including the specific allegations.

Historical Note

Section adopted by final rulemaking at 5 A.A.R. 563, effective February 3, 1999 (Supp. 99-1).

R2-19-104. Assignment of Administrative Law Judge: Setting the Hearing

Within 7 days of the Office's receipt of a request for hearing, the Office shall provide the agency in writing with:

1. The name of the administrative law judge assigned to hear the matter;
2. The date, time, and location of the hearing; and
3. The docket number assigned by the Office.

Historical Note

Section adopted by final rulemaking at 5 A.A.R. 563, effective February 3, 1999 (Supp. 99-1).

R2-19-105. Ex Parte Communications

A party shall not communicate, either directly or indirectly, with the administrative law judge about any substantive issue in a pending matter unless:

1. All parties are present;
2. It is during a scheduled proceeding, where an absent party fails to appear after proper notice; or
3. It is by written motion with copies to all parties.

Historical Note

Section adopted by final rulemaking at 5 A.A.R. 563, effective February 3, 1999 (Supp. 99-1).

R2-19-106. Motions

- A. **Purpose.** A party requesting a ruling from an administrative law judge shall file a motion. Motions may be made for rulings such as:

1. Consolidation or severance of matters pursuant to R2-19-109;
2. Continuing or expediting a hearing pursuant to R2-19-110;
3. Vacating a hearing pursuant to R2-19-111;
4. Prehearing conference pursuant to R2-19-112;
5. Quashing a subpoena pursuant to R2-19-113;
6. Telephonic testimony pursuant to R2-19-114; and
7. Reconsideration of a previous order pursuant to R2-19-115.

- B. **Form.** Unless made during a prehearing conference or hearing, motions shall be made in writing and shall conform to the requirements of R2-19-108. All motions, whether written or oral, shall state the factual and legal grounds supporting the motion, and the requested action.

- C. **Time Limits.** Absent good cause, or unless otherwise provided by law or these rules, written motions shall be filed with the Office at least 15 days before the hearing. A party demon-

strates good cause by showing that the grounds for the motion could not have been known in time, using reasonable diligence and:

1. A ruling on the motion will further administrative convenience, expedition or economy; or
2. A ruling on the motion will avoid undue prejudice to any party.

- D. Response to Motion.** A party shall file a written response stating any objection to the motion within 5 days of service, or as directed by the administrative law judge.
- E. Oral Argument.** A party may request oral argument when filing a motion or response. The administrative law judge may grant oral argument if it is necessary to develop a complete record.
- F. Rulings.** Rulings on motions, other than those made during a prehearing conference or the hearing, shall be in writing and served on all parties.

Historical Note

Section adopted by final rulemaking at 5 A.A.R. 563, effective February 3, 1999 (Supp. 99-1).

R2-19-107. Computing Time

In computing any time period, the Office shall exclude the day from which the designated time period begins to run. The Office shall include the last day of the period unless it falls on a Saturday, Sunday, or legal holiday. When the time period is 10 days or less, the Office shall exclude Saturdays, Sundays, and legal holidays.

Historical Note

Section adopted by final rulemaking at 5 A.A.R. 563, effective February 3, 1999 (Supp. 99-1).

R2-19-108. Filing Documents

- A. Docket.** The Office shall open a docket for each matter upon receipt of a request for hearing. All documents filed in a matter with the Office shall be date stamped on the day received by the Office and entered in the docket.
- B. Definition.** "Documents" include papers such as complaints, answers, motions, responses, notices, and briefs.
- C. Form.** A party shall state on the document the name and address of each party served and how service was made pursuant to subsection (E). A document shall contain the agency's caption and the Office's docket number.
- D. Signature.** A document filed with the Office shall be signed by the party or the party's attorney. A signature constitutes a certification that the signer has read the document, has a good faith basis for submission of the document, and that it is not filed for the purpose of delay or harassment.
- E. Filing and service.** A copy of a document filed with the Office shall be served on all parties. Filing with the Office and service shall be completed by personal delivery; 1st-class, certified or express mail; or facsimile.
- F. Date of filing and service.** A document is filed with the Office on the date it is received by the Office, as established by the Office's date stamp on the face of the document. A copy of a document is served on a party as follows:
1. On the date it is personally served.
 2. Five days after it is mailed by express or 1st class mail.
 3. On the date of the return receipt if it is mailed by certified mail.
 4. On the date indicated on the facsimile transmission

Historical Note

Section adopted by final rulemaking at 5 A.A.R. 563, effective February 3, 1999 (Supp. 99-1).

R2-19-109. Consolidation or Severance of Matters

- A. Standards for consolidation.** An administrative law judge may order consolidation of pending matters, if:
1. There are substantially similar factual or legal issues, or
 2. All parties are the same.
- B. Determination.** When different administrative law judges are assigned to the matters that are the subject of the motion for consolidation, the motion shall be filed with the administrative law judge assigned to the matter with the earliest pending hearing date.
- C. Order.** The administrative law judge shall send a written ruling granting or denying consolidation to all parties, identifying the cases, the reasons for the decision, and notification of any consolidated prehearing conference or consolidated hearing. The administrative law judge shall designate the controlling docket number and caption to be used on all future documents.
- D. Severance.** The administrative law judge may sever consolidated matters to further administrative convenience, expedition, and economy, or to avoid undue prejudice. Severance may be ordered upon the administrative law judge's own review, or a party's motion.

Historical Note

Section adopted by final rulemaking at 5 A.A.R. 563, effective February 3, 1999 (Supp. 99-1).

R2-19-110 Continuing or Expediting a Hearing; Reconvening a Hearing

- A. Continuing or expediting a hearing.** When ruling on a motion to continue or expedite, the administrative law judge shall consider such factors as:
1. The time remaining between the filing of the motion and the hearing date;
 2. The position of other parties;
 3. The reasons for expediting the hearing or for the unavailability of the party, representative, or counsel on the date of the scheduled hearing;
 4. Whether testimony of an unavailable witness can be taken telephonically or by deposition; and
 5. The status of settlement negotiations.
- B. Reconvening a hearing.** The administrative law judge may recess a hearing and reconvene at a future date by a verbal ruling.

Historical Note

Section adopted by final rulemaking at 5 A.A.R. 563, effective February 3, 1999 (Supp. 99-1).

R2-19-111. Vacating a Hearing

An administrative law judge shall vacate a calendared hearing and return the matter to the agency for further action, if:

1. The parties agree to vacate the hearing;
2. The agency dismisses the matter;
3. The non-agency party withdraws the appeal; or
4. Facts demonstrate to the administrative law judge that it is appropriate to vacate the hearing for the purpose of informal disposition, or if the action will further administrative convenience, expedition and economy and does not conflict with law or cause undue prejudice to any party.

Historical Note

Section adopted by final rulemaking at 5 A.A.R. 563, effective February 3, 1999 (Supp. 99-1).

R2-19-112. Prehearing Conference

- A. Procedure.** The administrative law judge may hold a prehearing conference. The conference may be held telephonically.

The administrative law judge may issue a prehearing order outlining the issues to be discussed.

- B. Record.** The administrative law judge may record any agreements reached during a prehearing conference by electronic or mechanical means, or memorialize them in an order.

Historical Note

Section adopted by final rulemaking at 5 A.A.R. 563, effective February 3, 1999 (Supp. 99-1).

R2-19-113. Subpoenas

- A. Form.** A party shall request a subpoena in writing from the administrative law judge and shall include:
1. The caption and docket number of the matter;
 2. A list or description of any documents sought;
 3. The full name and home or business address of the custodian of the documents sought or all persons to be subpoenaed;
 4. The date, time, and place to appear or to produce documents pursuant to the subpoena; and
 5. The name, address, and telephone number of the party, or the party's attorney, requesting the subpoena.
- B.** An Administrative Law Judge may require a brief statement of the relevance of testimony or documents.
- C. Service of subpoena.** Any person who is not a party and is at least 18 years of age may serve a subpoena. The person shall serve the subpoena by delivering a copy to the person to be served. The person serving the subpoena shall provide proof of service by filing with the office a certified statement of the date and manner of service and the names of the persons served.
- D. Objection to subpoena.** A party, or the person served with a subpoena who objects to the subpoena, or any portion of it, may file an objection with the administrative law judge. The objection shall be filed within 5 days after service of the subpoena, or at the outset of the hearing if the subpoena is served fewer than 5 days before the hearing.
- E. Quashing, modifying subpoenas.** The administrative law judge shall quash or modify the subpoena if:
1. It is unreasonable or oppressive, or
 2. The desired testimony or evidence may be obtained by an alternative method.

Historical Note

Section adopted by final rulemaking at 5 A.A.R. 563, effective February 3, 1999 (Supp. 99-1).

R2-19-114. Telephonic Testimony

The administrative law judge may grant a motion for telephonic testimony if:

1. Personal attendance by a party or witness at the hearing will present an undue hardship for the party or witness;
2. Telephonic testimony will not cause undue prejudice to any party; and
3. The proponent of the telephonic testimony pays for any cost of obtaining the testimony telephonically.

Historical Note

Section adopted by final rulemaking at 5 A.A.R. 563, effective February 3, 1999 (Supp. 99-1).

R2-19-115. Rights and Responsibilities of Parties

- A. Generally.** A party may present testimony and documentary evidence and argument with respect to the issues and may examine and cross-examine witnesses.
- B. Preparation.** A party shall have all witnesses, documents and exhibits available on the date of the hearing.
- C. Exhibits.** A party shall provide a copy of each exhibit to all other parties at the time the exhibit is offered to the administra-

tive law judge, unless it was previously provided through discovery.

- D. Responding to Orders.** A party shall comply with an order issued by the administrative law judge concerning the conduct of a hearing. Unless objection is made orally during a prehearing conference or hearing, a party shall file a motion requesting the administrative law judge to reconsider the order.

Historical Note

Section adopted by final rulemaking at 5 A.A.R. 563, effective February 3, 1999 (Supp. 99-1).

R2-19-116. Conduct of Hearing

- A. Public access.** Unless otherwise provided by law, all hearings are open to the public.
- B. Opening.** The administrative law judge shall begin the hearing by reading the caption, stating the nature and scope of the hearing, and identifying the parties, counsel, and witnesses for the record.
- C. Stipulations.** The administrative law judge shall enter into the record any stipulation, settlement agreement, or consent order entered into by any of the parties before or during the hearing.
- D. Opening statements.** The party with the burden of proof may make an opening statement at the beginning of a hearing. All other parties may make statements in a sequence determined by the administrative law judge.
- E. Order of presentation.** After opening statements, the party with the burden of proof shall begin the presentation of evidence, unless the parties agree otherwise or the administrative law judge determines that requiring another party to proceed first would be more expeditious or appropriate, and would not prejudice any other party.
- F. Examination.** A party shall conduct direct and cross examination of witnesses in the order and manner determined by the administrative law judge to expedite and ensure a fair hearing. The administrative law judge shall make rulings necessary to prevent argumentative, repetitive, or irrelevant questioning and to expedite the examination to the extent consistent with the disclosure of all relevant testimony and information.
- G. Closing argument.** When all evidence has been received, parties shall have the opportunity to present closing oral argument, in a sequence determined by the administrative law judge. The administrative law judge may permit or require closing oral argument to be supplemented by written memoranda. The administrative law judge may permit or require written memoranda to be submitted simultaneously or sequentially, within time periods the administrative law judge may prescribe.
- H. Conclusion of hearing.** Unless otherwise provided by the administrative law judge, the hearing is concluded upon the submission of all evidence, the making of final argument, or the submission of all post hearing memoranda, whichever occurs last.

Historical Note

Section adopted by final rulemaking at 5 A.A.R. 563, effective February 3, 1999 (Supp. 99-1).

R2-19-117. Failure of Party to Appear for Hearing

If a party fails to appear at a hearing, the administrative law judge may proceed with the presentation of the evidence of the appearing party, or vacate the hearing and return the matter to the agency for any further action.

Historical Note

Section adopted by final rulemaking at 5 A.A.R. 563, effective February 3, 1999 (Supp. 99-1).

R2-19-118. Witnesses; Exclusion from Hearing

All witnesses at the hearing shall testify under oath or affirmation. At the request of a party, or at the discretion of the administrative law judge, the administrative law judge may exclude witnesses who are not parties from the hearing room so that they cannot hear the testimony of other witnesses.

Historical Note

Section adopted by final rulemaking at 5 A.A.R. 563, effective February 3, 1999 (Supp. 99-1).

R2-19-119. Proof

- A. Standard of proof.** Unless otherwise provided by law, the standard of proof is a preponderance of the evidence.
- B. Burden of proof.** Unless otherwise provided by law:
1. The party asserting a claim, right, or entitlement has the burden of proof;
 2. A party asserting an affirmative defense has the burden of establishing the affirmative defense; and
 3. The proponent of a motion shall establish the grounds to support the motion.

Historical Note

Section adopted by final rulemaking at 5 A.A.R. 563, effective February 3, 1999 (Supp. 99-1).

R2-19-120. Disruptions

A person shall not interfere with access to or from the hearing room, or interfere, or threaten interference with the hearing. If a person interferes, threatens interference, or disrupts the hearing, the administrative law judge may order the disruptive person to leave or be removed.

Historical Note

Section adopted by final rulemaking at 5 A.A.R. 563, effective February 3, 1999 (Supp. 99-1).

R2-19-121. Hearing Record

- A. Maintenance.** The Office shall maintain the official record of a matter.
- B. Transfer of record.** Before an agency takes final action, the agency may request that the record be available for its review or duplication. Any party requesting a copy of the record or any portion of the record shall make a request to the Office and shall pay the reasonable costs of duplication.
- C. Release of exhibits.** Exhibits shall be released:
1. Upon the order of a court of competent jurisdiction; or
 2. Upon motion of the party who submitted the exhibits if the time for judicial appeal has expired and no appeal is pending.

Historical Note

Section adopted by final rulemaking at 5 A.A.R. 563, effective February 3, 1999 (Supp. 99-1).

R2-19-122. Notice of Judicial Appeal; Transmitting the Transcript

- A. Notification to the office.** Within 10 days of filing a complaint for judicial review of a final administrative decision based on or resulting from a recommended decision of an administrative law judge, the party shall file a copy of the complaint with the Office. The Office shall then transmit the record to the Superior Court.
- B. Transcript.** A party requesting a transcript shall arrange for transcription at the party's expense. The Office shall make a copy of its audio taped record available to the transcriber. The party arranging for transcription shall deliver the transcript, certified by the transcriber under oath to be a true and accurate transcription of the audio taped record, to the Office, together with 1 unbound copy.

Historical Note

Section adopted by final rulemaking at 5 A.A.R. 563, effective February 3, 1999 (Supp. 99-1).